

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALICE FAY HOLLEY,

Plaintiff,

-against-

MEMORANDUM AND ORDER
20-CV-970 (RPK) (LB)

FEIN, SUCH & CRANE LLP, REFEREE
GREGORY CERCHIONE, FRANCIS
REAL ESTATE BUYER-856 PROSPECT
PL. HOLDINGS LLC, U.S. BANK TRUST,
N.A., BROOKSTONE HOLDING LLC, and
DOES 1-10,

Defendants.

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RACHEL P. KOVNER, United States District Judge:

Plaintiff Alice Fay Holley, proceeding *pro se*, brought this wrongful foreclosure action on February 21, 2020, alleging unfair trade practices, predatory lending practices, and violations of consumer rights. *See* Compl. ¶¶ 2-3 (Dkt. #1). She named as defendants Fein, Such & Crane LLP; Referee Gregory Cerchione; Francis Real Estate Buyer-856 Prospect Pl Holdings LLC; Brookstone Holding LLC; and U.S. Bank Trust, N.A. *See id.* at 1.

Judge Bloom recommends that plaintiff's action be dismissed without prejudice against defendants Fein, Such & Crane LLP; Referee Gregory Cerchione; Francis Real Estate Buyer-856 Prospect Pl Holdings LLC; Brookstone Holding LLC; and Does 1-10. *See* Report & Recommendation ("R. & R.") 2 (Dkt. #13). Judge Bloom concludes that these defendants have not been validly served within 90 days of the complaint in accordance with Rule 4 of the Federal Rules of Civil Procedure. *Id.* at 1. Judge Bloom therefore recommends that these defendants be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m). *Ibid.*

When no party has objected to a magistrate judge's recommendation, the recommendation is reviewed, at most, for "clear error." *See* Fed. R. Civ. P. 72(b), Advisory Committee's Notes (1983) ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."); *see, e.g., Alvarez Sosa v. Barr*, 369 F. Supp. 3d 492, 497 (E.D.N.Y. 2019). Clear error will only be found only when, upon review of the entire record, the Court is left with "the definite and firm conviction that a mistake has been committed." *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006).

I have reviewed Judge Bloom's report and recommendation and, having found no clear error, adopt it in full. Plaintiff filed no proof of service whatsoever as to Defendants Fein, Such & Crane LLP; Francis Real Estate Buyer-856 Prospect Pl Holdings LLC; and Brookstone Holding LLC. And although proof of service was filed as to Referee Gregory Cerchione, *see* Proof of Service (Mar. 5, 2020) (Dkt. #4), that service did not comply with the requirements of Rule 4(c), because the server did not attest that he served the complaint. *See* Fed. R. Civ. P. 4(c)(1) ("A summons must be served with a copy of the complaint."). There is accordingly no clear error in Judge Bloom's finding that Mr. Cerchione was also not validly served. *See* Order at 2 (Dkt #6).

Defendants Fein, Such & Crane LLP; Referee Gregory Cerchione; Francis Real Estate Buyer-856 Prospect Pl Holdings LLC; and Brookstone Holding LLC are dismissed without prejudice.

SO ORDERED.

/s/ Rachel Kovner
RACHEL P. KOVNER
United States District Judge

Dated: January 6, 2021
Brooklyn, New York